JUN 23 1972

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

STATE OF ILLINOIS,
Movant-Plaintiff,
vs.
STATE OF MICHIGAN,
Defendant.

No. 57 Original

MOTION FOR LEAVE TO FILE COMPLAINT
and
COMPLAINT

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Of Counsel

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STATE OF ILLINOIS, *Movant-Plaintiff,* vs. STATE OF MICHIGAN, *Defendant.*	No.	Original

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Illinois, by its special assistant attorney general, invokes the original jurisdiction of this Court and asks leave of this Court to file a Complaint, submitted herewith, against the State of Michigan.

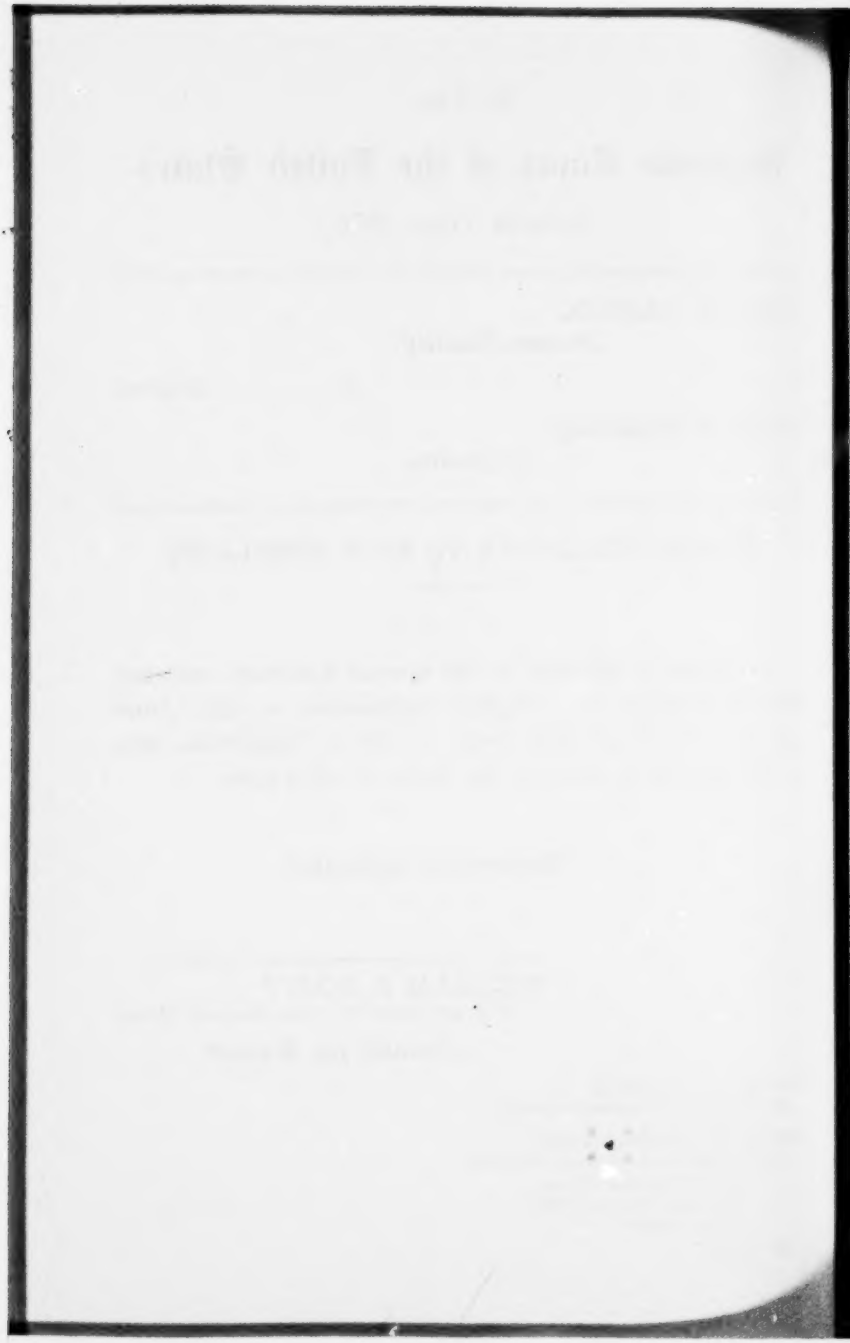
Respectfully submitted,

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WILLIAM J. SCOTT
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Counsel for Movant

ROBERT J. O'ROURKE
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STATEMENT IN SUPPORT OF MOTION

The State of Illinois in its sovereign capacity seeks to file an original action in this Court against the State of Michigan, under the authority of Article III, Section 2 of the Constitution of the United States arising out of the State of Michigan's violation of a reciprocal treaty and a disregard of an Illinois judicial injunction with respect to the liquidation by Illinois of a domestic insurance company.

The complaining state, Illinois, has thus suffered a wrong in its sovereign capacity through the action of the defending state, Michigan, furnishing ground for judicial redress. *New York* v. *Illinois,* 274 U.S. 488; *Texas* v. *Florida,* 306 U.S. 398; *Florida* v. *Georgia,* 52 U.S. 293.

Contrary to the reciprocal treaty by which both party states have adopted uniform laws respecting liquidation of Insurance Companies and contrary to a specific injunction of an Illinois Court (entered in the liquidation of a domestic insurance company) prohibiting action against the proceeds of a reinsurance contract between the insolvent insurer (Highway Insurance Company) and its reinsurer (Peerless Insurance Company), the defendant state of Michigan has allowed a direct action and recovery by two workmen's compensation claimants (Jack Federoff and John Shannon) directly against the proceeds of the reinsurance contract. This is in derogation of the reciprocal treaty between Illinois and Michigan, the Illinois injunction and the rights of the Illinois

Liquidator of the insolvent insurer, as well as of the other claimants in the Illinois Liquidation Proceedings. Involved is the effectiveness of an Illinois injunction, the binding effect of a reciprocal treaty between Illinois and Michigan and reinsurance proceeds exceeding a half a million dollars.

This Court has exercised jurisdiction over suits between states in controversies to restrain a breach of treaty or contract between states, and to obtain specific performance thereof. *Kentucky* v. *Indiana,* 281 U.S. 163. This Court has also entertained jurisdiction in suits between states to enjoin the enforcement of a law of one state which would allegedly cause injury in an area in which the complaining state has a legitimate interest. *Pennsylvania* v. *West Virginia,* 262 U.S. 553.

IN THE

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STATE OF ILLINOIS, *Plaintiff*,

vs.

STATE OF MICHIGAN, *Defendant*.

No. _____ Original

COMPLAINT

Now comes the State of Illinois and complaining of the State of Michigan alleges:

1. The plaintiff is the State of Illinois and the defendant is the State of Michigan, both being states of the United States of America.

2. Jurisdiction of this Supreme Court of the United States is invoked under and pursuant to Article III, Section II of the Constitution of the United States, and pursuant to 28 U.S.C. §1251(a)(1).

3. The plaintiff alleges that James Baylor is the successor in office to John F. Bolton, Jr. the prior Director of Insurance, of the State of Illinois, and is the existing executive officer in charge of the Department of

Insurance as its Director and in charge of the Bureau of Liquidations as the Liquidator of Illinois Insurance Companies which are insolvent.

4. That at all times pertinent hereto James Baylor, is the official and duly appointed Liquidator of Highway Insurance Company, an insolvent Illinois Insurance Corporation, hereinafter referred to as "Highway."

5. That "Highway" was and is reinsured by the Peerless Insurance Company, hereinafter referred to as "Peerless", and the latter in turn was and is reinsured by Excess Insurance Company, Ltd., hereinafter referred to as "Excess".

6. That Peerless Insurance Company is a New Hampshire corporation with principal office and place of business in New York, and Excess Insurance Company, Ltd. is not an Illinois corporation and its principal office and place of business is other than in Illinois.

7. That at all times pertinent hereto, Jack Federoff was the employee of William J. Ewing, d/b/a Ewing Roofing & Sheet Metal Company, and both are citizens of the State of Michigan and neither is a citizen of the State of Illinois.

8. That at all times pertinent hereto, John H. Shannon was the employee of Star Wrecking Company, Inc., a Michigan corporation, and both are citizens of the State of Michigan and neither is a citizen of the State of Illinois. Star Wrecking Company is a Michigan corporation and does not have its principal office and place of business in Illinois.

9. That Jack Federoff has claimed Workmen's Compensation from his employer, William J. Ewing, and John H. Shannon has claimed Workmen's Compensation from his employer, Star Wrecking; that these respective employers have workmen's compensation policies covering said claims and these policies were issued by Highway and reinsured, by Peerless and Excess.

10. That the insurance and reinsurance contracts involved were entered into, executed and issued in the State of Illinois.

11. That the liquidation of Highway was commenced and is pending in the Circuit Court of Cook County, Illinois, under No. 67 CH 3390, and prior to the determination of the instant workmen's compensation claims of Federoff and Shannon, namely on July 6, 1967 and July 28, 1967 nunc pro tunc as of July 6, 1967 and on March 20, 1969, the Chancellor entered specific injunctions in aid of his jurisdiction in the Liquidation Proceedings. A true and correct copy of said injunctions are attached and incorporated as pleading Exhibits A, B and C.

12. That at all times pertinent hereto there was in force and effect by reciprocal treaty in the States of Illinois and Michigan a statute entitled the "Uniform Provisions for Liquidation", Ill. Rev. Stats., Chap. 72, §833.1 et seq., under the terms and conditions of which it is the public policy of both states that *inter alia*, upon the entry or an order of liquidation, no levies, garnishments, attachments, executions or other proceedings shall be commenced against the delinquent insurer or its assets in the reciprocal state. Chap. 73, §833.9. The section reads as follows:

"833.9 §221.9 Attachment and garnishment of assets.) In the event of the commencement of delinquency proceedings in any reciprocal state no action or proceeding in the nature of an attachment, garnishment, execution or otherwise, shall be commenced in the courts of this state against such delinquent insurer or its assets. Added by act approved July 21, 1941. L. 1941, vol. 1, p. 832."

The declaration of purpose expressed in the statute is as follows: (§833.10)

"833.10 §221.10 Declaration of purpose.) The purpose of Sections 221.1 to 221.10 both inclusive is to promote uniformity in the liquidation, rehabilitation, reorganization or conservation of insurers doing business in more than one state. It is intended that Sections 221.1 to 221.10, both inclusive shall be liberally construed to the end that so far as possible the assets of such insurers shall be equally and uniformly conserved in all states, and that claimants against insurers shall receive equal and uniform treatment irrespective of residence or the place of the acts or contracts upon which their claims are based. The provisions of Sections 221.1 to 221.10, both inclusive shall be effective only with respect to this state and other states in which (a) it is provided by law that only the Insurance Commissioner or equivalent supervisory official of the State shall be vested with title to the assets of, and shall wind up the affairs of, delinquent insurers under judicial supervision; and (b) in substance and effect the provisions of Sections 221.1 to 221.10, both inclusive, are in force. The provisions of Sections 221.1 to 221.10, both inclusive, insofar as applicable to any insurer incorporated or organized in a foreign country, shall apply only to the assets, liabilities and business of such insurer within the several states. Added by act approved July 21, 1941. L. 1941, vol. 1, p. 832."

That other provisions of the Illinois Insurance Code, Chapter 73, also provide for liquidation of domestic insurance companies by Illinois Courts under the auspices of the plaintiff herein.

13. That notwithstanding said Illinois law and the reciprocal treaty statute quoted and cited herein and their applicability to the instant facts, the Michigan Supreme Court has rendered a decision authorizing and approving the determination of the liability of Highway and its reinsurers and of rights to the assets of Highway in a manner inconsistent with, contrary to and in flagrant disregard of Illinois law and denying said Illinois the full faith and credit which Article IV, Section 1 of the U.S. Constitution requires. A true and correct copy of said opinion of the Michigan Supreme Court is attached hereto and incorporated herein as pleading Exhibit D. This position of the State of Michigan is in conflict with judicial interpretation of the reciprocal treaty statute in other states. *State* v. *Preferred Accident. Ace Grain* v. *Rhode Island Ins. Co.*, 107 Fed. Supp. 80 (D.C., N.Y., 1952); *Janak* v. *Allstate Ins. Co.*, 319 F. Supp. 215 (D.C. Wisc., 1970). See also: *State* v. *Preferred Accident Ins. Co.*, 149 So. (2d) 632 (La., 1963).

14. That the denial of full faith and credit to the Illinois laws cited and quoted herein, as alleged and applicable to facts pleaded herein, also operates to grant such Michigan citizens as Jack Federoff and John H. Shannon, and their employers, privileges and immunities not accorded to Illinois citizens who are also claimants against Highway and its assets, and said refusal to grant Illinois law full faith and credit also deprives the plaintiff of the due process of law which it

is entitled to as party litigant in the courts of this country.

15. That the denial of full faith and credit to the Illinois laws cited and quoted herein as alleged and applicable to the facts pleaded herein, also operates to impair the obligations of the insurance and reinsurance contracts involved by reading into them diametrically opposite and inconsistent laws and statutes.

16. That a justiciable controversy exists between the plaintiff and the defendant and perhaps others who are as yet unnamed.

17. That the acts and conduct of the defendant alleged herein and such rulings as have been made are null and void because violative of the full faith and credit clause, the prohibition against impairment of the obligation of contracts and the other constitutional provisions alleged herein.

18. That unless this Court enters an order enjoining the holding of further proceedings and the taking of any further action by or on behalf of defendant, and the rulings made with respect thereto, until this Court can determine whether said actions are null and void, the plaintiff (and citizens of the State of Illinois) will be irreparably damaged without adequate remedy at law.

19. That upon the entry of such protective orders as are necessary in aid of this Court's jurisdiction, the facts alleged warrant an early determination of the respective rights and obligations of the parties herein.

20. That the plaintiff has no other adequate remedy whether at law, in equity or otherwise.

Wherefore, the plaintiff prays that this Court enter orders:

1) Allowing the addition of such other parties as the Court may deem necessary to a complete determination of the controversy and to order service of summons in accordance therewith;

2) Enjoining the defendant and all other parties and everyone else from taking any action in the premises until this Court can proceed to a determination of the issue of whether the action and conduct alleged is null and void and in violation of substantial constitutional provisions;

3) Granting such other and further primary relief and in aid of jurisdiction as this court may deem meet;

4) Determining the rights of the parties as follows:

(a) That the reciprocal treaty between Illinois and Michigan be held binding upon the State of Michigan and that the State of Michigan must abide by its terms. The Illinois Liquidation Proceedings of Highway Insurance Company conducted under the Insurance Code pertaining to liquidation of domestic insurance companies, being Chapter 73, and particularly the "Uniform Provisions for Liquidation" portions thereof, and the order of Chancellor O'Brien entered therein is entitled to full faith and credit by the Judicial Courts and Workmen's Compensation Tribunals of the State of Michigan;

(b) That the determination of the rights of Jack Federoff and John H. Shannon and their respective employers and of the plaintiff by the Workmen's

Compensation tribunal and Judicial Court of the State of Michigan is null and void as to the Liquidator and the Reinsurers.

(c) That the determination respecting the rights and liabilities of Highway, Peerless, Excess and of the plaintiff is null and void;

(d) That the order of Illinois Chancellor O'Brien in the Highway liquidation proceedings be enforced according to its terms and that this Court enter such orders in aid of jurisdiction as is necessary to give it full faith and credit;

(e) That the defendant and the workmen's compensation claimants be relegated to such rights and liabilities as any of them may have under Illinois law and as is enforceable in the Liquidation Proceedings in accordance with the applicable Illinois law.

Respectfully submitted,

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WILLIAM J. SCOTT
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Counsel for Plaintiff

ROBERT J. O'ROURKE
First Assistant Attorney General

JOSEPH B. LEDERLEITNER
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Chicago, Illinois 60603
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Of Counsel

PROOF OF SERVICE

I, JOSEPH B. LEDERLEITNER, Special Assistant Attorney General of the State of Illinois and a member of the Bar of the Supreme Court of the United States hereby certify that on the 22nd day of June, 1972, I served copies of the foregoing Motion for Leave to file Complaint and the Complaint on the Governor and Attorney General of the State of Michigan by depositing 5 copies in a United States post office or mail box, as certified mail, return receipt requested with air mail postage prepaid and addressed to:

HONORABLE GEORGE MILLIKEN
Governor of Michigan
State Capital Building
Lansing, Michigan

HONORABLE FRANK J. KELLEY
Attorney General of Michigan
525 W. Ottawa
Lansing, Michigan

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JOSEPH B. LEDERLEITNER
Special Assistant Attorney General
State of Illinois

An Attorney for Plaintiff

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED